People Care, Incorporated *and* 1199 National Health and Human Service Employees' Union *and* Eileen Francis. Cases 2–CA–27207, 2–CA–28509, and 2–CA–27909

March 9, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND BRAME

On July 16, 1997, Administrative Law Judge Steven Davis issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party each filed an answering brief, and the Respondent filed a reply brief in support of its exceptions. The General Counsel and the Charging Party each filed exceptions and a supporting brief. The Respondent filed an answering brief to the exceptions of the General Counsel and the Charging Party.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, People Care, Incorporated, New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs 2(b) and (e).

"(b) Provide the Union with all the information requested by the Union in its letter of February 17, 1994, excluding the names of clients, except such information already provided to the Union through its response of June 26, 1996.

"(e) Within 14 days after service by the Region, post at its place of business in New York, New York, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 17, 1994."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to furnish or delay in furnishing 1199 National Health and Human Service Employees' Union with the information requested by the Union in its letter of February 17, 1994, excluding the names of clients.

WE WILL NOT refuse to meet at reasonable times for bargaining with the Union.

WE WILL NOT insist on the removal of union negotiator Richard Levy as a condition for the continuation of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment, as if the initial year of certification has been extended for an additional 8 months from the commencement of bargaining and, if an understanding is reached, embody the understanding in a signed agreement:

[1] The Charging Party has excepted, inter alia, to the judge's failure to find that the Respondent violated Sec. 8(a)(5) and (1) of the Act by insisting on bargaining at evening sessions only. Since we have adopted the judge's finding that the Respondent unlawfully failed to meet with the Union at reasonable times for bargaining, it is unnecessary to decide the issue raised by the Charging Party. It would not materially affect the remedy and Order in this proceeding.

[2] We shall modify the judge's recommended Order to comport with our decision in *Excel Container*, 325 NLRB 17 (1997), and to clarify that the Respondent is ordered to provide the Union, without any additional request by the Union, all the information requested by the Union in its letter of February 17, 1994, excluding the names of clients, except such information already provided to the Union by the Respondent through its response of June 26, 1996. See *I & F Corp.*, 322 NLRB 1037 fn. 1 (1997).

On the facts of this case, Chairman Truesdale would grant the extraordinary remedies requested in the consolidated complaint.

> All full-time and regular part-time home health care workers employed by us, including certified home health aides, personal care aides, quality compliance technicians, junior aides and housekeepers employed by us out of our facility located at 500 Eighth Avenue, New York, New York, excluding all other employees, including registered nurses, licensed practical nurses, office clerical and professional employees, guards and supervisors as defined in the Act.

WE WILL provide the Union with all the information requested by the Union in its letter of February 17, 1994, excluding the names of clients, except such information already provided to the Union through our response of June 26, 1996.

WE WILL, on request, provide the Union in a timely and diligent fashion with bargaining dates.

WE WILL, on request, meet, deal with, and bargain collectively with Richard Levy and any other duly designated representative of the Union.

PEOPLE CARE, INCORPORATED

Ian Penny, Esq., for the General Counsel.
David Lew and *Eric Stuart, Esqs. (Peckar & Abramson, P.C.)*, of River Edge, New Jersey, for the Respondent.
Gwynne Wilcox, Esq. (Levy, Ratner & Behroozi, P.C.), of New York, New York, for the Union.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based on a charge and a first amended charge in Case 2–CA–27207 filed on February 22 and April 4, 1994, respectively, by 1199 National Health and Human Service Employees' Union (the Union), an amended complaint was issued by Region 2 of the Board on November 10, 1994, against People Care, Incorporated (the Respondent or Employer), and based on a charge in Case 2–CA–27909 filed on October 24, 1994, by Eileen Francis, an individual (Francis), a complaint was issued on February 28, 1995, against the Respondent, and based on a charge in Case 2–CA–28509 filed on June 14, 1995, by the Union, a consolidated complaint was issued against the Respondent on October 12, 1995.[1]

The complaint, as amended at the hearing, alleges that he Respondent (a) refused to furnish certain information to the Union, and alternatively, substantially delayed in furnishing such information and (b) refused to bargain in good faith with the Union by refusing to meet at reasonable times and for reasonable durations insisting on the removal of a union negotiator as a condition for the continuation of bargaining; presenting certain bargaining demands designed to be rejected by the Union and to prevent the parties from reaching agreement; and engaging in a pattern of bargaining without any good-faith intention of reaching agreement with the Union. The complaint sought a remedy pursuant to *Mar-Jac Poultry,* 136 NLRB 785 (1962).[2]

The Respondent's answer denied the material allegations of the complaint, and on December 18, 1995, and May 21, June 12 and 28, 1996, a hearing was held before me in New York City. On my denial of the Respondent's motion to admit certain evidence of negotiations which took place subsequent to the alleged violations of the Act, the Respondent filed a request for special permission to appeal my ruling. On July 18, the Board directed me to reopen the hearing to permit the parties to introduce such evidence and to consider that evidence with respect to both the merits of the complaint allegations and the remedies requested by the General Counsel. On October 24, 1996, a reopened hearing was held before me, and such evidence was received.

On the evidence presented in this proceeding, and my observation of the demeanor of the witnesses, and after consideration of the briefs filed by all parties, I make the following[3]

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation, having its principal place of business at 500 Eighth Avenue, New York City, has been engaged in the business of providing housekeeping services to disabled and elderly individuals. Annually, in the course and conduct of its business operations, the Respondent derives gross revenues in excess of $500,000, and purchases and receives at its facility products, goods, and materials valued in excess of $25,000 directly from points located outside New York State. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Facts

The Respondent, a for-profit company which supplies home health care aides to aged and ill people in their homes, employs between 700 and 900 such workers.

1. Events leading up to the negotiations

On September 24, 1992, the Union filed a petition to represent the Respondent's employees. A representation hearing was held in October and November 1992, at which the Respondent supplied certain personnel documents pursuant to a union subpoena.

On January 12, 1993, a Decision and Direction of Election was issued. On May 10, the Respondent submitted an *Excelsior* list which set forth the names and addresses of employees who were eligible to vote in the election. On June 11 and 12, an election was conducted, and on September 24, 1993, the Union was certified as the exclusive collective-bargaining representative in the following appropriate unit:

[1] The Respondent's answer denies the filing and service of the charge in Case 2–CA–27207. My review of the original documents in evidence, including an affidavit of service of the charge, and a signed return receipt therefor, establishes that the charge was filed and served as set forth in the complaint.

[2] At the opening of the hearing, the General Counsel moved to dismiss all allegations of the complaint concerning Francis. I granted the motion.

[3] The Respondent's unopposed motion to correct the hearing transcript in certain respects is granted.

> All full-time and regular part-time home health care workers employed by the Employer, including certified home health aides, personal care aides, quality compliance technicians, junior aides and housekeepers employed by the Employer out of its facility located at 500 Eighth Avenue, New York, New York, excluding all other employees, including registered nurses, licensed practical nurses, office clerical and professional employees, guards and supervisors as defined in the Act.

On November 9, Aida Garcia, the Union's executive vice president and director of its home care division, sent a letter to the Respondent requesting bargaining. On November 16, the Respondent's attorney, David Lew, responded that the Union's "representational status" was pending before the Board. Subsequently, the Board denied the the Respondent's request for review, and on November 30, Garcia again requested bargaining and asked Lew for dates which were available to him for negotiations. When no dates for bargaining were forthcoming, Garcia informed the Union's attorneys.

On January 3, 1994, Richard Levy, the Union's general counsel, wrote to Lew, proposing eight dates for bargaining, between January 10 and 21, seven of the dates being "p.m. only," meaning sessions beginning at noon or 1 p.m. Levy suggested that Lew choose "two or more dates now," and advise him promptly. Levy testified that he requested multiple bargaining dates since he anticipated that negotiations for this first contract would be difficult, requiring much time.

Lew responded by letter of January 12, stating that none of the requested dates was available "on such short notice," and that he would be "meeting with my client, hopefully in the near future, to discuss the issue, including all of the NLRB's actions to date." Lew concluded by saying that he would be in contact with Levy when he and his client met.

Not having heard from Lew, Levy phoned him apparently without success, and then wrote to him on February 15, requesting dates for bargaining.

On February 17, 1994, Levy sent a letter to Lew requesting that Lew contact him "as quickly as possible regarding bargaining dates." The letter also requested the following information, which he asserted the Union needed to prepare for negotiations:

> 1. The name and address of each current employee and his/her title and current assignment, date of first employment, number of years with the agency and date of birth. The latter information is particularly important to pension coverage questions.
>
> 2. The wages being paid to each of the present employees.
>
> 3. A description of all benefits provided to employees, including but not limited to pension, health insurance, life insurance, vacations, holidays, sick leave, other leave policies and copies of any benefit plans, summary plan descriptions or other documents describing such benefits.
>
> 4. Any employee manuals or memoranda describing work requirements or personnel practices affecting employees in the bargaining unit.
>
> 5. A description of the procedure by which employees are selected for assignment to particular cases (clients) and a listing of all such assignments made within the last six months showing the name of the employee assigned, the name of the client and the date of the assignment and the reason for her selection for that assignment.[4]

Levy testified that from February 17 through June 8, he did not receive any response to his letter of February 17. Levy's letter of June 8, in response to Lew's questions to the Board agent who was investigating an unfair labor practice charge, explained why the requested information was relevant.

On June 14, Lew wrote to Levy, in which he essentially claimed that the information requested was either supplied to the Union in the representation proceeding, or was burdensome and confidential. Lew noted that he had called Levy, and apparently Levy returned the calls, but the two men could not thereafter make contact.

Lew testified that the information requested in Levy's February 17 letter was not requested for the purposes of collective-bargaining, as set forth in the letter. Rather, according to Lew, at that time Levy knew there was no collective bargaining ongoing, and that the Respondent was testing the Union's certification, adding that Levy was simply "posturing" in the letter. However, Lew admitted that his June 14 letter did not advise Levy that he would not supply the information because he sought review of the certification, which was pending at that time.

Levy replied in a letter sent the same day, stating that Lew's objections to the information requests were "frivolous." Levy again asked for bargaining dates, but none were forthcoming.

On June 22, a complaint was issued in Case 2–CA–27207, alleging that the Respondent failed and refused to meet and bargain with the Union, and refused to furnish the information set forth above. On July 25, the General Counsel filed a petition for summary judgment, and on September 16, the Board issued its decision, finding that the Respondent refused to bargain in order to contest the Union's certification, granting the petition in that respect, and ordering it to bargain. However, the Board remanded the matter concerning the refusal to provide information for further action. *People Care, Inc.,* 314 NLRB 1188 (1994).

On September 26, Levy wrote to Lew asking him to call to arrange bargaining dates. Lew testified that at that time, the Respondent had decided not to appeal the Board's decision to the court of appeals, and that the Respondent would be in a very strong economic position in negotiations, and therefore decided to comply with the Board's Order. Accordingly, on October 18, Lew wrote to Levy, advising that the Respondent would bargain, and asked Levy to have the union negotiator call him.

In late October, Levy spoke to Lew. Levy asked for dates in late October and early November. Lew was not available in early November. According to Levy, Lew suggested two dates, November 18 and 29. According to Lew, he agreed to meet on November 18, but said that he would have to check his client's availability to meet on November 29 or 30.

On October 26, Levy wrote to Lew agreeing to Lew's "suggested dates" of November 18 and 29. Lew immediately wrote back, saying that he had not agreed to November 29, and that in fact his client was not available on that day, noting that when they met on November 18 he was certain that they would be able to agree on the next date for bargaining.[5]

[4] The Union later withdrew its request for the names of the clients.

[5] The General Counsel argued in his brief that Lew was being disingenuous about saying that he had to check with his client Donald Ja-

On November 4, Levy wrote to Lew confirming the November 18 session, and asking whether Lew still had available November 30, which was referred to as a possible date for meeting. Levy asked Lew to contact him about November 30 and other dates in December. Lew did not respond since he believed that further dates would be discussed at negotiations.

2. The November 18 bargaining session

Prior to this session, Levy met with union representatives and assembled a complete proposed collective-bargaining agreement.

At the session, which began at 11 a.m., about 25 persons were present for the Union, including Levy, Garcia, and other representatives and employees.[6] Lew and Jacobson represented the Respondent. The Union presented the the Respondent with its proposed contract, and Levy spoke about each clause. Following his presentation, Levy asked Lew if he had any questions or responses, and Lew replied that he had none at that time. Levy asked Lew to call him if anything could be worked out or clarified before the next session.

Levy also renewed his request for the materials he had asked for, and Lew gave no response to that request.

At the end of the meeting, Levy said that he was concerned that so much time had elapsed since the Union's certification, and that he wanted to set a number of bargaining dates quickly, since this was a first contract, and he expected that negotiations would be extensive. Levy proposed dates in late November and early December, which were rejected by Lew, who said that his first available date for bargaining was December 15.

Levy responded that that was too far away, but if that was the earliest date they could meet, then they should agree on some dates immediately after December 15, such as in December and early January. Lew replied that he could not do that, and would only be able to supply additional dates when they met on December 15.

Lew further replied that he would no longer meet to bargain during the day, since such daytime bargaining meant that employees would not be working. He said that one employee who was present called the Respondent and said she could not work that day. Levy responded that they should meet during the day, and offered to have employees present who were not working that day.

Lew testified that 1 or 2 days prior to this session, the Respondent received a list of 20 employees who would be present at negotiations, thereby leaving their cases. Lew refused to meet during the day since most of the employees are employed during the day, leaving work at about 5 p.m. He told Levy that The Respondent would only meet in the evening, beginning at 6:45 p.m. Levy replied that such a late start to bargaining was not productive and would limit the amount of time to bargain, unless the parties bargained late into the night, which Lew said he would not do. Levy also remarked that many of the employees who were members of the negotiating committee were working mothers and single heads of households who needed to be home in the evenings with their children, and that their travel home in the evening presented a safety issue. Nevertheless, Lew insisted on meeting in the evening, when the employees had completed their work.[7]

Lew testified, as to the setting of new dates, that he had heavy workdays on nearly every day from November 18 to December 15, and that he had to make sure that Jacobson was available. Lew added that Levy had a "knack for continually asking for earlier and earlier dates," and "pushed" and "bugged" him for earlier dates. They agreed to meet on December 15 at 6:45 p.m.

That day, November 18, Levy sent a letter to Lew, confirming the December 15 session, and asking that he inform Levy if a date earlier than December 15 became available. Levy also asked Lew to reconsider his insistence on evening bargaining sessions, noting that the Union was only asking that five people be released from work. Lew testified that no bargaining dates prior to December 15 were available because of his busy schedule, nor at the end of December due to the holiday season. Lew claimed that Levy was "posturing" and preparing for litigation at the November 18 session, by asking for other dates.

On December 6, Levy wrote to Lew again requesting the information set forth in his February 17 letter. That information was not forthcoming. Lew testified that Levy was simply "posturing" by his request since the information request was the subject of the instant case, and Levy had not responded to his June 14 letter that the Union was in possession of all the information.

3. The December 15 bargaining session

The meeting was scheduled to begin at 6:45 p.m. Levy stated that Lew arrived at 7:20 p.m., whereas Lew said that he arrived before 7 p.m., due to heavy traffic. About 20 to 30 people were present for the Union. The meeting ended at about 9:30 p.m. The Respondent was also represented by Jerry Lewkowitz, its president and chairman.

Levy renewed his request for the information he demanded in his February 17 letter, but none was forthcoming. Lew told Levy that the parties were in litigation on that issue, and he would take it "under advisement." Levy said that he expected a response to the Union's proposed contract at this meeting.

No formal response was given to the proposed contract. Rather, during this and the next session, Lew went through the proposed contract in detail.

Levy testified the during this meeting, Lew questioned Levy extensively about every item in the proposed contract, including details which were, according to Levy, clear on their face. According to Levy, the questions asked were "superfluous" concerning matters that were "obvious or unnecessary in an attempt to waste time." Thus, Levy stated that Lew questioned him about an opening paragraph of the contract which stated that it was the intent of the parties that the contract promote and improve the interests of the clients of the Employer. In relation to that paragraph, Lew asked how the contract would advance the Employer's interests. Levy stated that Lew went through each line of the contract, asking the meaning of words and the clauses "in great and lengthy detail." Levy added that he had never seen any management attorney ask the kinds of questions that Lew asked concerning provisions familiar to any experienced labor attorney.

At the session, Levy asked Lew how many employees were employed by the Respondent, and Lew replied that he did not know, but believed that the number was between 700 and 900.

cobson, since he was aware, through the 1992 representation hearing, that Jacobson had not been actively involved in the Company since 1990. I do not agree with the General Counsel. In fact, Jacobson attended the November 18 bargaining session.

[6] Lew stated that 9 union committee members and 28 other employees were present.

[7] Virtually all the employees work during the day.

Lew admitted going through the proposals page by page in order to have a "full understanding" of them. He noted that many provisions in the contract related to voluntary agencies funded by governmental agencies, which had no application to the Respondent's operation, and he questioned the Union concerning that. Lew also mentioned the Union's omission of amounts requested for contributions to the health and pension funds. Lew asked why a definition of "employee" was needed since the Board's certification defined who was in the unit. They discussed the on-call provision, Lew disputed the workability of the seniority provision, telling Levy that the Respondent covers a case on demand from the hospital or discharging institution.

The Union has no collective-bargaining agreements with any other for profit home health care agencies. Lew refused to agree to the union-security clause, stating that in this competitive industry, the Respondent should not be the only employer to undertake another accounting function in checking off dues. Levy replied that by agreeing to union security, the Respondent would enjoy a good relationship with the Union. Lew also questioned certain language in that clause pursuant to which the Union agreed to hold the Respondent harmless in the event of any claim or proceeding by any government agency or any group arising from certain deductions made by the Respondent to the Union's political action fund and credit union.

Lew also discussed the no-discrimination clause, stating that although the provision prohibited discrimination against employees with disabilities, he said that the language should encompass the Americans with Disabilities Act, and a discussion concerning such language took place.

Lew inquired as to the proposed contract's provision that the Respondent and Union sponsor a conference on abuse of home care workers in the work place. Levy said that no conferences are being held now, and that it is in the planning stage. Lew then asked why the clause was needed. Levy replied that the matter was very important to the Union.

Lew stated that the parties spent nearly 1 hour discussing the seniority clause, which applied in cases of vacation scheduling, layoff, and recall, and that job assignments shall take into consideration certain factors including client requests and the language spoken by the client. Lew noted that a seniority provision was unworkable because assignments for the next day are made by coordinators who cover separate boroughs with separate lists of employees. Lew stated that they don't have time to check personnel files and seniority lists to determine who was laid off from work, and who must be recalled next.

Lew also noted that some employees leave the Respondent's employ for 1 month and then return, and under such circumstances it would be impossible to assign cases by seniority to those who are entitled to recall. Lew remarked that time is of the essence in making assignments, and that the coordinator assigns to the case the first qualified person she can find, and that if an assignment is not made immediately, the case might be lost to a competitor of the Company. Levy replied that seniority is the basis on which assignments are made in the Union's contracts with New York city, and he insisted on a seniority clause here.

Lew also questioned the clause which provided that 1 union delegate for each 200 client cases shall be released from work for up to 8 paid hours per month for union business provided that another employee was available to cover the delegate's case. Levy noted that such a clause was in the Union's contract with the New York City, and Lew answered that the Respondent was not a city agency. Lew also noted that the Respondent's clients insisted on continuous coverage by the same aide, and a substitute would be unacceptable. Lew also said that whatever a delegate was required to do, she could do on the phone since the Respondent had no central office to which employees report.

The contract contained a clause which stated that the Respondent agreed to consider qualified applicants who were referred from the 1199 Employment Service. Lew asked how many applicants are registered by the service. Levy said that the service is not yet in existence but it is being worked on. Lew then asked why it was in the proposed contract.

The proposed contract also provided for a probationary period of 90 days for all employees. Lew questioned that, noting that the Respondent had employees who work full time, and others who work occasionally. They discussed the issue of an appropriate probationary period.

With respect to the contract clause providing for "adequate sleeping arrangements" for employees assigned to a 24-hour case, Lew asked for a definition of "adequate."

Levy testified that the Respondent caucused at 8:05 p.m. and returned at 8:30 p.m., after which the discussion continued until 9:10 p.m. when Lew said he had to leave. Levy objected, said the parties made very little progress, no positions had been taken, no counterproposals had been made, and no information had been provided. Levy said he asked the Respondent to continue bargaining, but it refused.

According to Lew, the meeting ended at 9:15 or 9:30 p.m.. He denied that Levy asked him to bargain later. He testified that he told Levy that he expected to finish his examination and questioning of the Union's proposals at the next session, and then he would present the Respondent's counterproposals.

Levy testified that he asked that the next bargaining date be in December, and begin during the daytime. Lew rejected those suggestions. Lew said that this was holiday time, and in any event, was busy every day and evening in December.

Lew suggested January 4 as the next meeting date, but Levy was not available. The parties agreed to meet again on January 9, and Levy asked Lew to call him before that date if he any other questions concerning the contract or its meaning. Levy also asked Lew to advise him if any bargaining dates became available before January 9. Lew did not make such a call. Levy also asked for additional dates in January, after January 9. Lew refused to agree to any additional dates beyond January 9.

4. The January 9, 1995 bargaining session

Levy stated that Lew arrived at 7:10 p.m. for the meeting which was scheduled for 6:45 p.m. Lew testified that he arrived on time.

The discussion began with the Union's wage proposal, which was made without the Union's having received definite information concerning the wages of the employees. Such information had been requested in February. Levy asked if there was a wage policy or whether wages were tied to years of service. No answer was forthcoming, according to Levy. Lew testified that the proposed contract's wage rates were based on New York city contracts which had no relation to the Respondent's operation. Lew stated that he believed that the Respondent has a separate payroll for home health aides, with checks being mailed to bargaining unit employees weekly.

Lew asked questions concerning the wage proposal's language concerning single client and mutual client rates, and for

an explanation of the provision that provided a certain wage rate if the employee worked for two or more clients in the same home at the same time and has completed less than 2100 hours.[8] He questioned the wage rate, and was told that the wage listed was that for voluntary, nonprofit agencies. Lew reiterated that the Respondent is a for profit organization. The proposal mentioned a weekend wage differential. Lew asked how "weekend" was defined—what days and hours were included. Levy pointed out that weekend was defined in the contract as being from Saturday at 8 a.m. to Monday at 8 a.m.

Levy asked whether the Respondent had a policy permitting employees time off on weekends if they were employed 24 hours per day, 7 days per week. The Union sought a provision permitting weekend time off. According to Levy, Lew said that he did not know if the Respondent had such a policy but would find out. However, Lew testified that he told Levy that the Respondent's operation runs around the clock, and makes no dis tinction for weekends, and that it does not give its employees weekends off.

Levy also asked what the Respondent's vacation policy was. Lew replied that he did not know and would have to let the Union know.

The parties discussed the holiday provision. Lew raised a question about the holiday rate, stating that the contract contained inconsistent provisions (art. X, par. 7—time and one half for holidays worked; and art. XIII, par. 2—regular time for holidays worked). Levy clarified the Union's position on the issue. Levy asked what holidays the Respondent provided, and for its holiday policy. Lew replied that he was not certain as to what the holiday policy was, although he believed that Christmas and New Years Day were holidays, and that the employees might receive a small bonus for working those days. Lew said that he would supply such information. Lew admitted that since the February 17 request for information, the Respondent did not give the Union information concerning its holiday policy.

In addition, Lew said that he would consider certain changes to language in the proposed contract concerning holidays which fall on weekends. Lew objected to the provision requiring an employee who was scheduled to work on a holiday to notify the Employer in advance if she wanted to take the day off. Lew explained that the Respondent had a strict policy requiring each employee to work each day.

The Union's annual leave proposal was also discussed. One matter in contention was the Union's proposal that an employee's annual leave request "shall be granted unless an emergency situation exists." The Respondent noted that "emergency situation" was not defined, and explained to the Union that the Employer and its clients expected continuous service on the particular case from the employee. The Union's proposal for unpaid leave was also discussed, particularly the clause providing that certain unpaid leave requests shall be reasonably granted given the needs of the employee and Employer. An example was given where an employee had to care for a sick relative in another State. Lew had earlier stressed the importance of employees remaining on the job in continuance service for their clients.

The parties discussed the Union's proposal that employees receive 4 paid days off for the death of a family member. They discussed the definition of family member, with Levy noting that that term could include a life partner. Other relationships were discussed, including common law spouses and stepchildren.

The Union's proposal requiring the Employer to pay for training and carfare between two client's homes visited in the same day was discussed. The Employer said that it did not pay those items now, except for limited carfare, but that Lew would consider it.

Lew refused to accept the Union's management-rights clause, as being too restrictive. The parties discussed for nearly one half hour the Union's discharge and penalties clause. The Union's proposal required notification to the Union of a discharge within 48 hours following the firing, with a right to submit the matter to the grievance and arbitration procedure of the contract. The Union demanded due process in connection with giving the Employer the right to discharge for cause. Lew claimed that the Employer had no control over discharges, since if it is told to remove an aide from a home by a visiting nurse, it does so without any formalities. He stated that if the employee committed a serious offense, such as abuse of a client, the employee would no longer be employed by the Respondent, without any review. Levy argued that there should be a review of the decision not to reemploy the aide.

The Union's four-step grievance and arbitration procedure was discussed. Lew said that he wanted a simpler grievance procedure, and would propose one, and that the Employer might consider a named arbitrator, as opposed to going through an arbitration agency.

Levy testified that the Employer, which took a caucus of 20 minutes, did not make any proposals to the Union, refused to take any positions on any of the contract's provisions, but said that it would perhaps agree to a named arbitrator.

Lew noted several references in the contract to action taken by the New York City with respect to the assignment or withdrawal of cases. Lew remarked that such a practice is not known in the for profit home care industry. Levy answered that those provisions were in the contracts with the voluntary agencies.

Levy provided the amounts sought for contributions to the Union's benefit fund, but not for the pension fund. Levy said he would provide those amounts. The proposed contract contained a provision for contributions to the training fund. Levy explained that such a training program is not yet in effect, but was "sort of a wish list."

Levy testified that the meeting ended at about 9 p.m. with Lew announcing that he had to leave. Levy attempted to have Lew stay and continue to negotiate, but he refused. Levy asked Lew for several dates for bargaining, and requested that bargaining begin earlier in the day. Lew rejected both proposals. Lew said that his first available date was on February 2. Levy asked Lew to call prior to that date if he had any questions or positions to take, and also asked him to provide the information which had been previously requested, and to advise if earlier dates for bargaining became available. Lew denied being asked to remain to bargain further.

With respect to the information requested by the Union, Lew stated that although he did not personally review the transcript in the representation hearing, he believed that "virtually" all the information requested was supplied to the Union in that proceeding.

[8] Levy defined mutual client as the situation where the employee cared for a husband and wife in the same residence. The employee was entitled to more pay. Lew stated that he was not familiar with that term.

5. The February 2 bargaining session

Levy stated that The Respondent arrived at 7:13 p.m. at the session which was scheduled for 6:45 p.m. About 35 employees were present. Lew stated that he was present on time, but Lewkowitz arrived at about 7:10 p.m.

The Respondent presented its written counterproposals. In addition to the terms discussed below, the contract also contained a provision (which is the Employer's current policy) giving employees who work on Thanksgiving Day, Christmas Day, or New Year's Day shall receive $1.10-per-hour additional pay, and that in the fifth year of the contract, $1.20 per hour. The proposal also provided for a 6-month unpaid leave of absence for illness, disability, or maternity; an agreement that the Employer would supply the Union on a semiannual basis with a list of unit employees and their addresses; a provision that the Employer would reimburse employees for carfare if they were assigned to two or more clients in 1 day; a no-strike, no-lockout clause; a management-rights clause; a union recognition clause; a union visitation clause; and provision for a union bulletin board.

The parties discussed the wage proposal, which consisted of a raise of one half of 1 percent every other year. Levy again requested information concerning the employees' current wages. It was not supplied. He asked for the amounts of the highest and lowest wages paid to employees, and Lew responded that he was not certain, but the lowest wage might be $4.25 or $5.50 per hour. Lew refused to agree to a $5.50 minimum rate.

Levy expressed incredulity at the 10-year duration of the contract, and at the wage proposal, noting that a person earning $5 per hour would receive a 2.5- to 3-cent-per-hour raise every other year. Lew agreed with Levy's figures, but Lew noted that the wage clause also includes a provision that the Employer may grant merit wage increases at any time during the contract term. Lew testified that a long contract was necessary because the Employer had, in recent years, been the object of three organizational campaigns.

The Employer's vacation proposal provided that regular employees were entitled to 1 week's vacation pay if they worked 42 or more weeks during the year. Levy remarked that it would be difficult for an employee to meet that standard because this was an industry marked by a high rate of turnover and a lack of continuous employment. Levy explained that in between cases, because of the death or move of a client, there could be delays before the employee is assigned another case. The proposal further provided that employees who have worked more than 10 years would receive an additional 2 days of vacation pay in the 8th year of the contract. At the representation hearing, the Respondent's official testified that a "small number of people who, if they work an extensive amount of time, will get some small vacation benefit . . . only a few . . . actually qualify."

Levy also noted his disagreement with the Employer's proposal that employees would be on probation for the first 1040 hours of employment during which time they could be dismissed without cause. He noted that because of a lack of continuous employment in the industry, an employee would be on probation for a long time.

Levy noted that the Employer's proposal did not provide for health or pension coverage. Lew's explanation was that since the Respondent was a for profit provider, competing with similar companies, it saw no need to provide such coverage for its employees.

The Employer's discipline and discharge proposal provided that in cases of abuse of patients, dishonesty, intoxication, insubordination, assault, failure to provide for the health and welfare of patients, chronic lateness, and chronic absenteeism, the employee was subject to summary dismissal with no right to grieve such action. The proposal also contained a grievance and arbitration procedure. Lew testified that at that session he was prepared to modify his proposal and make concessions regarding this matter.

A caucus was then held by the Union, during which the employees expressed their anger and disappointment at the Employer's proposals, which they believed were "outrageous and unfair, particularly at the low wage increases, and the failure of the Employer to propose any health and welfare coverage." Employees expressed their belief that inasmuch as they were loyal, hard working long-term employees they deserved a fairer proposal.

Levy suggested that the employees should express their views to the Employer when the session resumed. When the parties reconvened, Levy told the Employer that the employees wanted to address them. Lew protested, saying that Levy was the Union's spokesman, but then agreed to hear from the workers.

One employee stated that she worked hard, and believed that the wage proposal was inadequate. Another worker said that she could not live on the amount of money she was being paid. She had spoken about 30 seconds when Lew turned to Lewkowitz, and they began to speak together. According to Levy, they were "visibly and ostentatiously ignoring the speaker."

Levy testified that at that point he raised his voice to Lew, "chastising" him, and telling him to stop talking while he was being addressed by his employee, accusing him of being "incredibly rude" and that his refusal to listen to a poorly paid employee who has been working very hard for many years constitutes "terrible behavior."

Lew raised his voice, saying that he had a right to talk to his client. Levy testified that there was a "heated exchange" between him and Lew as to whether he was speaking to his client or being "obnoxious and rude" to the employee. Levy told him he was acting very badly, and was rude and discourteous. Lew responded that Levy's comments were improper. Lewkowitz wrote in his notes that a "screaming match" ensued.

At that time, other employees began to raise their voices and point their fingers at Lew and Lewkowitz, saying that they could not treat the employees the way they had, and that they were rude to the speaker. Other employees said they were very offended.

Levy stated that one or two employees stood, while another one or two walked forward toward the table where the negotiators were sitting, while other employees were "yelling and getting angry" at the Employer.

Levy further stated that Lew announced that he did not have to stay and listen to people yelling at him, and that he was leaving. Employees responded by saying that Lew should listen to them, and that his behavior was very bad and "disgusting" and asked how they could be treated this way after years of dedicated service.

Lew and Lewkowitz then packed their papers, and started to make their way to the door. According to Levy, several employees "came forward to express their outrage at [their] conduct and he asked them to clear back." Levy accompanied Lew

and Lewkowitz out the door, and he asked employees who were standing there to move back.

Levy stated that at the elevator he asked Lew why he was "carrying on," and accused him of "inciting" the employees' reaction by his behavior. According to Levy, Lew replied "that's all right, that's fine that this happened. Thank you very much. This will be very helpful. Thank you. This is outrageous. You caused these people to yell at me."

Lew testified that during Levy's questioning of him concerning the Employer's proposals, before the Union's caucus, Levy termed the offer "horrendous, ridiculous, disrespectful, an insult to the employees" and that he should not be treating the employees this way. Lewkowitz quoted Levy as calling the proposals worthless, a sham, and irresponsible. While making these allegedly inflammatory comments, Levy sat "sidesaddle" in his chair, as much addressing the audience of employees as the Employer. Lew characterized Levy's conduct as "playing up to the employees, and trying to get them agitated." Lew replied that this proposal was only his first offer, and that if there was movement by the Union, there would be movement by the Employer.

Lew further testified that when the second employee began speaking, he bent to Lewkowitz and asked who she was. Lewkowitz said that he did not know. This exchange took 5 seconds, and at which Levy "went bananas, screaming uncontrollably at the top of his longs, his face totally red, his veins bulging. According to Lew, Levy "lost everything, like a raving lunatic almost." According to Lew, Levy yelled, "[W]ho the hell do you think you people are, treating them like this? This is still America." He demanded that Lew listen to the employees. Levy yelled for 3 to 4 minutes, and Lew conceded that he "screamed back" for 1 minute.

Lew stated that employees got out of their chairs and began to move forward. Lew and Lewkowitz packed their materials and said they were leaving. At that point, all the employees were standing and yelling that "you can't treat us this way, we're not dirt," repeating everything that Levy was yelling. Lew, who weighs 220 pounds, stated that a female employee grabbed both his suit jacket lapels and nearly lifted him off the ground. He heard other employees yelling: "You aint' going anywhere Mr. Lewkowitz. We want what's due us." Lew stated that Levy continued to yell throughout this time. Lew saw Lewkowitz blocked from leaving the room, and he saw one or two male nursing assistants punch at Lewkowitz, while others pushed him, one employee tried to pick him up, and others blocked his way to the door.

Lewkowitz testified that he was "rushed" by 10 to 15 people who "pounded and beat" him on his head, neck and arms, for 5 to 8 seconds.

Lew said to Levy, "look what the hell you did here. Let us out of this goddamned room." According to Lew, Levy did nothing to intervene, but continued to scream. Lew said that he and Lewkowitz could not leave because the door was blocked by about 15 to 20 people. Finally, two union representatives yelled at the others to let them out, and they did so.

Lew stated that at the elevator, Levy told him that what had occurred was his (Lew's) fault, that he was disrespectful to the people. Lew accused Levy of "orchestrating" the incident, and said that he had not "heard the end of this." Lew denied telling Levy that he was happy that this occurred, or that this incident would be very helpful.

The next day, Lew wrote to Levy, accusing him of "inciting a riot," and "being involved in an assault" on him and Lewkowitz. Lew testified, however, that Levy did not threaten him or touch him. Levy responded, conceding that there were "raised voices on both sides." Levy wrote, and testified that he did not see anyone touch either Lew or Lewkowitz, and generally accused Lew of not bargaining in good faith.

6. The attempts to resume negotiations

One month later, on March 2, Levy wrote to Lew suggesting nine additional bargaining dates in March. On March 8, Lew wrote to Levy stating that because of Levy's "despicable activities that you orchestrated and engaged in" at the February 2 bargaining session "I am unable to deal with you in the future regarding this matter or any other matter." Lew asked that the negotiations be assigned to another attorney at Levy's firm, and that person should contact him. Lew agreed to deal with the person taking over the negotiations, and offered to speak with that person concerning ensuring that appropriate negotiations take place, and the safety of himself and his client are assured.

On April 27, union official Garcia wrote to Lewkowitz asking him for three or four proposed dates for bargaining. On May 5, Lewkowitz replied, stating that if Garcia should contact Lew, he will need a letter authorizing such contact by the Union's lawyers. On May 8, Levy wrote Lew, authorizing him to deal directly with Garcia in order to arrange a date for continued negotiations.

On May 12, Lew wrote to Garcia requesting that the name of the new attorney handling the negotiations be supplied. On May 16, Garcia replied, stating that she was authorized to deal with him to set up dates for negotiations, and that she was awaiting such dates. On May 19, Lew responded that he wanted to know whether Levy would be present at the resumed negotiations. On May 25, Garcia wrote to Lew, advising that she would be the Union's chief spokesperson at the negotiations.

On June 7, Lew wrote to Garcia, again asking whether Levy would be present at future negotiations, adding that in the event that he was advised that Levy would not be present at negotiations, he (Lew) would then agree to resume negotiations "with appropriate safeguards for my client and myself."

On June 29, Mitra Behroozi, an attorney in Levy's office, wrote to Lew, advising that she would be substituting for Levy, and asked for dates for negotiations. On July 5, Lew wrote to her, suggesting that the number of union participants be limited to 12.

On July 24, Behroozi advised Lew that the Union would have 17 people on its negotiating committee and 2 officers, the organizer and herself, a total of 21 persons. She noted that limiting the number of persons in attendance were conditions imposed by the Respondent to which the Union agreed only to obtain a fair and early contract. On August 4, Lew objected to that number of union participants, and on August 15, Behroozi agreed to have 14 people present, which was acceptable to the Respondent.

On September 5, Lew proposed a bargaining date of September 27, which was unacceptable to the Union. The parties agreed to meet on October 5 at 6:45 p.m.

7. Subsequent negotiations

On October 5, 1995, the parties discussed their original proposals. On October 12, the instant consolidated complaint was issued, alleging that the Respondent failed to bargain in good faith with the Union. They continued to discuss their original

proposals on October 23, 1995. On November 12, the Regional Director advised the Respondent that he would recommend to the Board that it enforce its decision in Case 2–CA–27207, requiring that it bargain in good faith. On January 2, 1996, the parties met and again discussed their original proposals.

At each of those three sessions, the parties omitted from the discussion, at the Union's request, economic issues such as wages, health and pension funds, and vacation and sick pay.

The following sessions consisted of the parties each presenting its counteroffer at alternate sessions. During the 2- to 2-1/2-hour sessions, the counteroffer was discussed, the parties caucused, and a response was given.

Thus, sessions were held on January 25, 1996, at which the Union presented a counteroffer, and on February 26, the Employer presented its counteroffer which reduced the probationary period from 1040 hours to 90 working days of continuous employment, and deleted insubordination, chronic lateness, and absenteeism as nongrievable grounds for discharge.

On March 19, the Second Circuit Court of Appeals enforced the Board's bargaining order in Case 2–CA–27207. Thereafter a bargaining session was held on March 27, at which the Union made a counteroffer which included economic issues.

Subsequent negotiations were held on April 29, at which the Respondent again modified its proposals. Regarding wages, the proposal provided that all employees who have not received a wage increase for at least 1 year, shall receive a raise of 1 percent above their wage, effective on the execution date of the contract, and on each anniversary date. Regarding holidays, if employees work on Thanksgiving Day, Christmas Day, or New Year's Day, they are entitled to $1.25-per-hour additional pay. Regarding vacations, on the third anniversary of the contract, employees employed more than 8 years were entitled to 2 additional days of vacation pay, thus receiving 7 days vacation. The contract also provided that only abuse of patients and/or failure to provide for the health and welfare of patients are nongrievable items. The contract's term was reduced to 4 years.

Further bargaining sessions were held on May 13, June 3 and 20, July 15, August 21, September 19, and October 10. On alternate dates, the Respondent and the Union offered their counterproposals which were discussed at the session in which they were presented. At the next session, the other party presented its counterproposals. During such period of time, the Respondent modified its proposals, at the various sessions, by reducing the 90-day probationary period to 80 days; and then 65. The 1-percent wage raise was increased to 1.25 percent, and then 1.5 percent and 1.75 percent.

A bargaining session was also set for the last date of the hearing here, October 24. According to the last proposal presented, at the October 10 session, the Respondent's wage raise offer was 1-3/4 percent; recognized seniority for the purpose of vacation scheduling; offered arbitration in the event of suspension or discharge for any cause except abuse or neglect of patients; offered an extra $1.50 per hour for time worked on the 3 holidays set forth above; proposed 1 week's vacation pay for employees employed more than 1 year, who have worked more than 42 weeks during that year; and in addition, employees employed for 7 or more years are entitled to up to 2 additional vacation days, depending on their length of employment effective in the second year of the contract; 1 paid personal day per year; and bereavement pay of 2 days for employees completing 1500 hours of employment within the past year.

8. The refusal to furnish information

The complaint alleges that on February 17 and June 8, 1994, by letter, and on June 13, 1994, at a meeting, the Union requested that the Respondent furnish it with certain information, which is set forth in full above. The complaint further alleges that such information was necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the employees, and that the Respondent, since February 17, 1994, has failed and refused to furnish it.

The Respondent's answer denies all of the above allegations. It argues that such information was not necessary to the performance of the Union's responsibilities as the collective-bargaining representative of the unit, and in any event such information either had been in the Union's possession, or made a matter of record in the October and November 1992 representation proceedings, or turned over to the Union pursuant to subpoena in that matter.

Each item requested in the Union's February 17 letter will be discussed:

> 1. The name and address of each current employee and his/her title and current assignment, date of first employment, number of years with the agency and date of birth. The latter information is particularly important to pension coverage questions.

In his reply dated June 14, 1994, Lew stated that the Union should have a "relatively up to date list of names and addressees of unit employees which was furnished the Union in connection with the NLRB representation case proceeding." As set forth above, the *Excelsior* list was provided to the Board on May 10, 1993. Lew admitted that that was the last list provided to the Union. Thus, Lew claimed that the Union should be satisfied with a list which was more than 1 year old.

In addition, at the representation hearing, the Respondent's president, Bruce Jacobson, testified that in 1992, the turnover rate was 40 to 50 percent, and that within 6 months of training new employees, the Employer retains less than half such workers. Lew testified that in October and November 1995, he knew that there was a "turnover rate" among the employees, but he believed that it was declining. Union official Garcia testified that generally there is a high turnover in the home health care industry.

> 2. The wages being paid to each of the present employees.

Garcia testified that the Union did not have, and the Respondent did not supply wage rate information. She said that she had a "general idea" of the wage rates inasmuch as a majority of the employees completed authorization cards during the campaign and listed their wage.

In his letter of June 14, 1994, Lew stated that the Union had that information, and in any event compiling that data was "exceptionally burdensome" because the wages varied from patient case to patient case, and from client to client.

At the February 2, 1995 bargaining session, Lew provided general information concerning the high and low ranges of wages being paid. By letter dated March 15, 1996, Lew merely provided a list containing two columns setting forth the numbers of employees earning certain wages, without their names.

Finally, in a letter dated June 26, 1996, to the Union's attorney, Lew provided a list of names and addresses of unit em-

ployees, their title, date of hire, hourly rate of pay, and date of birth. That list was prepared by the Respondent's controller in 1 week from computerized data available in The Respondent's offices, which Lew assumes was available in the same place in 1994. Lew also testified that the Respondent maintained a separate payroll for unit employees, and mailed checks to them on a weekly basis.

> 3. A description of all benefits provided to employees, including but not limited to pension, health insurance, life insurance, vacations, holidays, sick leave, other leave policies and copies of any benefit plans, summary plan descriptions or other documents describing such benefits.
>
> 4. Any employee manuals or memoranda describing work requirements or personnel practices affecting employees in the bargaining unit.
>
> 5. A description of the procedure by which employees are selected for assignment to particular cases (clients) and a listing of all such assignments made within the last six months showing the name of the employee assigned, the name of the client and the date of the assignment and the reason for her selection for that assignment.

Lew's June 14, 1994 letter stated that the information requested in items 3, 4, and 5 was given to the Union's attorney during the representation proceeding.

Lew testified that a certain document produced at the representation hearing, entitled "Orientation for HHA/PCW" was responsive to the Union's request for information because it contained "certain policies." The document included procedures to be followed by employees, for such matters as absences, merit wage raise policy, and vacation policy, which was set forth as 1 week's paid vacation after 1 year of employment and 42 workweeks of employment in that year. It was noted that six major holidays were celebrated by the Respondent, and two others depending on the hospital involved. It was further noted that no extra pay was paid for holiday work; the procedure to be followed while in the patient's home; a statement that workers compensation, liability, and unemployment insurance covers each employee when on a case; a list of responsibilities; and certain medical procedures such as infection control.

However, at the representation hearing, the Respondent's president, Jacobson, testified that that document was once a part of new employees' orientation package, but it was, at that time, about 6 months old, and certain items were out of date. In addition, Jacobson did not know if it was being used at the time of that hearing, but that he doubted it.

Regarding holiday policy, at the representation hearing, Jacobson testified that the Respondent offers no paid holidays, but employees receive extra pay for Christmas Day, New Year's Day, and one other which he could not remember. The Union formally learned, for the first time, at the bargaining session of February 2, 1995, that the Respondent's holiday policy was that it offered $1 additional pay for Thanksgiving Day, Christmas Day, and New Year's Day.

Regarding its vacation policy, at the representation hearing, Jacobson testified that employees working 42 of 52 weeks are entitled to "some small vacation benefit." For the first time, at the February 2, 1995 session, the Union learned that such employees receive 1 week of paid vacation.

The Respondent argues that all the information requested was provided during the representation proceeding, through testimony and exhibits. However, Jacobson only gave general, limited testimony in that hearing concerning personnel practices, employee work hours, and assignment procedure.

III. ANALYSIS AND DISCUSSION

1. The duty to furnish information

Information sought concerning bargaining unit employees is presumptively relevant for purposes of collective bargaining and must be furnished on request. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967); and *Halltown Paperboard Co*., 323 NLRB 295 (1997). The specific items requested here, as set forth above, are basic items needed by the Union in order to form its negotiation strategy.[9] The Respondent's answer denies the relevance of the items requested, but has not proven that they are not relevant to the Union's performance of its responsibilities to the unit.

The Respondent's letter of June 14, 1994, in response to the Union's request for information, claimed that the Union either had the information or that it was too burdensome to compile. It is the Respondent's burden to establish the truth of those contentions, which I find it has not done. *Somerville Mills*, 308 NLRB 425, 442 (1992).

As to the names and addresses of employees, I reject the Respondent's argument that the names and addresses provided in the *Excelsior* list satisfied its obligation to the Union. That list was more than 1 year old, and since the Respondent had experienced a substantial turnover of employees during that period of time, the old list could not be relied on as being accurate.

The wage data which was available to the Union from the authorization cards completed by some of the employees was stale, incomplete, and may not have been accurate. The limited information provided to the Union at the February 2, 1995 bargaining session, consisting of the lowest and highest rates of pay, was not sufficient to satisfy the Union's request for information concerning the wages being paid to each employee. It is significant to note that the information which was ultimately provided, on June 26, 1996, consisting of the names and addresses of unit employees, their title, dates of hire and birth, and hourly rate of pay, was compiled from information available at the Respondent's offices, which presumably was available in February 1994, and took only 1 week to get together. Accordingly, the Respondent's claim that the material was burdensome to compile, is without merit.

With respect to the request for employee benefits, employee manuals concerning personnel practices, and case assignment procedure, the Respondent's claim that such information was contained in the testimony and exhibits in the representation hearing is similarly without merit. As set forth above, the limited information provided therein was, even according to the Respondent official's testimony, out-dated, incomplete, and inaccurate. The testimony provided concerning employee benefits was inconsistent. Thus, the testimony and exhibits concerning holiday and vacation benefits were at odds with the Respondent's then current policy, and its personnel policy manual was described by its official as out of date, and he did not know if it was in use.

Accordingly, the Respondent's claim that the Union could obtain the information it requested by searching through the

[9] The items requested by the Union have been found to be presumptively relevant. *Maple View Manor,* 320 NLRB 1149 (1996).

extensive record of the representation hearing is simply false. Even assuming that the Union could locate the information, the material provided therein was incomplete, misleading, inaccurate, out of date, and may not have been in use. Furthermore, the Respondent may not refuse to furnish relevant information to the Union on the ground that the Union has an alternative source or method of obtaining such information. The Union is under no obligation to utilize a burdensome procedure in order to obtain desired information where the employer may have such information available in a more convenient form. *Orthodox Jewish Home for the Aged*, 314 NLRB 1006, 1008 (1994); and *KCET-TV,* 312 NLRB 15, 19 (1993).

It is also clear that the Respondent did provide information concerning its holiday and vacation benefits at the February 2, 1995 bargaining session. However, that was the first time, nearly 1 year after the Union's request, that it gave the Union accurate information concerning those benefits. Similarly, on June 26, 1996, the Respondent gave the Union the names and addresses of unit employees, their title, date of hire, and hourly rates of pay, as requested in the Union's February 1994 letter.

The Respondent had an obligation to furnish the information without undue delay, and in a reasonable time. *Barclay Caterers*, 308 NLRB 1025, 1037 (1992); and *Sivalls, Inc*., 307 NLRB 986, 1007 (1992). In evaluating the speed with which the information is furnished, the Board considers the complexity and extent of the information sought, its availability, and the difficulty in retrieving the information. *Samaritan Medical Center*, 319 NLRB 392, 398 (1995). Here, accurate information concerning holiday and vacation benefits could have been provided immediately on request. Such information was readily at the Respondent's disposal. Similarly, inasmuch as the payroll information, provided in June 1996, was compiled within only 1 week after Lew requested it, from information available in the Respondent's office, it is clear that there was no valid reason for the extensive delay in its being furnished to the Union. Such an extraordinary delay, as was present here, in providing only certain of the information requested, was unwarranted, and violated the Act.[10]

It must also be noted that other items requested, specifically those set forth in request number 5, have not been furnished to the Union at all.

2. The Respondent's insistence on the removal of the union negotiator

The complaint alleges, and the Respondent denies, that the Respondent unlawfully insisted on the removal of Union Attorney Richard Levy as a condition for the continuation of collective bargaining. Although the Respondent argues in its brief that the Union "voluntarily" substituted another attorney for Levy, it is clear that the Respondent insisted, as a condition of continuing negotiations, that Levy be removed.

Thus, as set forth above, in answer to Levy's letter of March 2, 1995, Lew responded on March 8 that he was "unable to deal with Levy in the future regarding this matter," and asked that the negotiations be assigned to another attorney. Thereafter, in a letter of June 7 to union official Garcia, Lew asked whether Levy would be present at future bargaining sessions, and advised that when he was informed that Levy would not be present, Lew would then agree to resume negotiations.

> It is well established that each party to a collective-bargaining relationship has both the right to select its representative for bargaining and negotiations and the duty to deal with the chosen representative of the other party. However, where the presence of a particular representative in negotiations makes collective bargaining impossible or futile, a party's right to choose its representative is limited, and the other party is relieved of its duty to deal with that particular representative. [*Fitzsimons Mfg.Co*., 251 NLRB 375, 379 (1980).]

The Board has stated that the test to determine whether a party can refuse to deal with a particular representative is "whether there is persuasive evidence that the presence of the particular individual would create ill will and make good-faith bargaining impossible*." KDEN Broadcasting*, 225 NLRB 25 (1976).

However, the cases in which the Board has found such a refusal permissible have involved egregious situations in which (a) a union representative physically assaulted the company's personnel director in an unprovoked attack, *Fitzsimons*, supra, and (b) an employee made unsubstantiated allegations to a bank that the employer falsified loan applications, and that the employer's owners were involved in prostitution and the use and sale of cocaine. *Sahara Datsun*, 278 NLRB 1044 (1986).

However, in *Long Island Jewish Medical Center*, 296 NLRB 51, 71 (1989), a case involving the barring of a newly appointed union representative from the employer's premises, the representative lightly pushed the employer's administrator, cursed her, and blocked her from leaving her desk, cursed another administrator and engaged in a shoving match with her, the Board found that there was no persuasive evidence that the representative's presence at the facility would create ill-will and make good-faith bargaining impossible.

It is quite apparent that the February 2, 1995 bargaining session quickly deteriorated following Levy's criticism of Lew's failure to listen to an employee as she addressed him and the Respondent's president.

The question is whether Levy's conduct permitted the Respondent to refuse to negotiate with the Union until it replaced him. Admittedly, Levy did not assault or threaten to assault the Respondent's representative. Even assuming the Respondent's evidence, Levy's conduct consisted of a strong, if not hostile criticism of the Respondent's counterproposals during the bargaining session. The Respondent argues that Levy incited the riot which ensued. However, the facts are clear that nothing untoward occurred until Lew turned his attention away from the employee speaker. That prompted Levy's rebuke, which then erupted into a shouting match between the attorneys, and then involvement by the employees.

While it is true that the employees were upset and disappointed at the Employer's offer, they controlled their anger until the confrontation between the representatives. It cannot be said, however, that Levy incited them during the caucus at which they expressed their frustration at the proposals. They simply expressed their disbelief, apparently without prompting, that they could be given such a proposal considering their long and dedicated service. Their anger was held in check until the argument between Levy and Lew.

I find credible the testimony of Lew and Lewkowitz that they were touched, in a hostile way, by certain of the partici-

[10] *Kurz-Kasch, Inc*., 286 NLRB 1343, 1353 (1987), cited by the Respondent, is inapposite since in that case the Board found that the respondent had timely furnished the requested information.

pants. Lew gave uncontradicted testimony that the woman who manhandled him was discharged by the Respondent for that reason. However, it certainly cannot be said that Levy caused the participants to engage in that conduct. The most that the Respondent could argue, as it does, is that Levy saw the belligerent actions of the participants, did nothing to stop it, and he continued to yell.

Inasmuch as the outburst cannot be attributed to Levy, but rather was initially prompted by Lew's inattention to the person addressing him, it cannot be said that the incident was totally unprovoked. The Union's right to have the representative of its choosing, in this case its general counsel, represent it in difficult, extended bargaining negotiations such as these involving a large number of employees must prevail. Levy's conduct at the bargaining sessions was proper. No objection was raised to his presence, and no difficulty arose until the incident of February 2. Under such circumstances, barring him from further representation of the Union during these negotiations with the Respondent would not be warranted.

It has not been shown that by persuasive evidence that the presence of Richard Levy would make collective bargaining impossible or futile, or cause such ill will that bargaining could not take place.

I accordingly find and conclude that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing to negotiate with the Union unless Levy was replaced.

3. The Respondent's refusal to meet at reasonable times and for reasonable durations

The complaint alleges that from November 18, 1994, through February 2, 1995, the Respondent refused to meet at reasonable times and for reasonable durations.

> To bargain collectively is the performance of the mutual obligation of the employer and the [union] to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. Section 8(d) of the Act.

In *J .H. Rutter-Rex Mfg. Co.,* 86 NLRB 470, 506 (1949), the Board stated that the obligation to bargain "encompasses the affirmative duty to make expeditious and prompt arrangements, within reason, for meeting and conferring. Agreement is stifled at its source if opportunity is not accorded for discussion or so delayed as to invite or prolong unrest or suspicion. It is not unreasonable to expect of a party to collective bargaining that he display a degree of diligence and promptness in arranging for collective-bargaining sessions when they are requested, and in the elimination of obstacles thereto, comparable to that which he would display in his other business affairs of importance."

At the end of the November 18, 1994 negotiation session, union negotiator Levy proposed dates to resume bargaining in late November and early December. Lew rejected them but agreed to meet on December 15. Levy agreed to that date but asked Lew to agree upon further dates. At that time, and at later sessions, Lew refused to agree to dates in advance, saying that he could only agree on a date at the next session.

Following November 18, although he insisted on bargaining only in the evenings, Lew maintained that he was unavailable on any evening between the three dates that he had agreed upon to negotiate, November 18, December 15, January 9, and February 2. Further, he could not bargain during the day because of his concern that employees should be at work rather than attending bargaining sessions, and he could not bargain during certain evenings because of tiring workdays.

With respect to his reason for bargaining only in the evening because of the employees' work schedules, the Union immediately offered to have only employees who were off duty attend the sessions. Lew continued to insist on evening sessions.

If an employer is concerned about the loss of an employee's services because of the employee's presence at negotiations, it may properly insist on a "reasonable alternative" such as bargaining during nonworktime such as during the evening. *Milwhite Co*., 290 NLRB 1150, 1162 (1988); and *Indiana & Michigan Electric Co.,* 229 NLRB 576 (1977). Here, The Respondent claimed at the first, daytime bargaining session that it had just received a request for time off from one employee seeking to be relieved of her case in order to attend the negotiations during worktime. Accordingly, the Respondent had a legitimate reason for insisting that bargaining take place during on-work hours. It asserted without contradiction that its clients and their families preferred that the employee caring for the client remain on the case until concluded, without being replaced, and that such was the Respondent's policy.

However, the Union offered to have only those employees present at the sessions who were off duty. That offer was not accepted by the Respondent, and apparently the Union did not press that offer thereafter. Rather, the Union continued to object to evening sessions on the ground that bargaining time was limited, the employees were needed at home, and traveling late at night was dangerous. I do not believe that such concerns were sufficient to overcome the Respondent's legitimate claim that employees remain on the cases assigned, and not be replaced in order to attend bargaining sessions.

I accordingly find that the Respondent has not violated the Act by insisting on bargaining at evening sessions only.

The Board has long held that "the busy schedule of [The Respondent's] attorney and chief negotiator . . . does not excuse the Respondent's obligation to bargain in good faith." *Lawrence Textile Shrinking Co.,* 235 NLRB 1178, 1179 (1978). In addition, the Board has found a violation in an employer's refusal to set times for future meetings and by delaying the scheduling of future meetings. *Lower Bucks Cooling & Heating,* 316 NLRB 16, 22 (1995).

In both instances, I find that the Respondent's refusals to set times for future meetings in advance, and its claim that its negotiator, Lew, was too busy to bargain at times other than those it agreed to, constituted violations of its obligation to bargain in good faith with the Union. *Nursing Center at Vineland,* 318 NLRB 901, 905 (1995). Surely, the Respondent's negotiator could have, if he wished, become available more frequently than once per month to meet with the Union. The Respondent's unreasonable refusal to set dates in advance, and its "refusal to accede in any reasonable or rational fashion to the Union's constant requests for more frequent meetings" violates the Act. *Calex Corp*., 322 NLRB 977 (1997). "Considerations of personal convenience, including geographic or professional conflicts, do not take precedence over the statutory demand that the bargaining process take place with expedition and regularity. An employer acts at its peril when it selects an agent incapacitated by these or any other conflicts." *Calex,* supra; and *Caribe Staple Co*., 313 NLRB 877, 893 (1994).

I also note that the Respondent's negotiators were late to at least two meetings. I appreciate their reasons for their lateness,

due to traffic, etc., however, the Respondent had an obligation to meet with the Union at the appointed time.

4. Unreasonable bargaining demands

The complaint alleges that the Respondent unlawfully presented bargaining demands designed to be reject by the Union and to prevent the parties from reaching agreement.

In support of its argument, the General Counsel asserts that the Respondent's February 2 proposals were unreasonable, and "artificially polarized the parties' bargaining positions."

As set forth above, Section 8(d) of the Act does not require either party to "agree to a proposal or require the making of a concession.'' "Although the Board does not evaluate whether particular proposals are acceptable or unacceptable, the Board will examine proposals when appropriate and consider whether, on the basis of objective factors, a demand is clearly designed to frustrate agreement on a collective-bargaining contract." *Reichold Chemicals,* 288 NLRB 69 (1988).

Here, the General Counsel characterizes the Respondent's first proposal as "extreme," arguing that the proposal must be viewed in the context in which it was made—the employees were waiting 18 months since the election in June 1993; the Union's post-Board Order request to bargain was more than 4 months old, and that The Respondent had delayed the start of bargaining. In that context, according to the General Counsel, the Respondent's proposals were designed to frustrate agreement.

The Respondent argues that its initial proposals were reasonable, and that in any event it was prepared to modify them if the Union showed some movement in its proposals. Based on the above legal principles, I cannot find that the Respondent's proposals were designed to frustrate agreement. The Respondent's wage proposal provided for a minimal wage increase, not a wage freeze or a reduction in wages. Pursuant to its current policy, it offered the same vacation and holiday benefits, and did not offer pension and health insurance coverage. There is some evidence, however, that its current policy for grieving disciplinary action was more liberal than the procedure it proposed, and its proposed 10-year duration to the contract is quite long.

First, it must be emphasized that these were initial proposals. The Respondent said repeatedly at the negotiation on February 2 that it was prepared to alter those proposals if the Union modified its first offer. The negotiations were clearly in a nascent state at that point. It cannot be said, even given these proposals, that they were "so consistently and predictably unpalatable to the other party that the proposer should know agreement is impossible." *Palace Performing Arts Center,* 312 NLRB 950, 958 (1993).

Moreover, when the Respondent's initial proposal is considered in the context of further negotiations, it must be found that its first proposal was not designed to frustrate agreement. Thus, as set forth above, the Respondent substantially modified its proposals in the 14 subsequent bargaining sessions.

In *Captain's Table*, 289 NLRB 22, 24 (1988), the Board found no violation where negotiations had ended prematurely, and a charge was filed based on the early bargaining sessions. The Board stated that the union had not "sufficiently tested the Respondent's proposals to permit us to assess the latter's willingness to bargain in good faith . . . . The Respondent's first specific counterproposal regarding wages . . . was a starting point for future negations. The Respondent neither stated nor suggested by its conduct that it intended its first wage offer to be its last. To the contrary, it is uncontested that the The Respondent's wage offer was on the table, awaiting a response, at the close of the parties' fourth and final bargaining session."

In *Captain's Table*, as here, "the bargaining process . . . had just begun when the Union, soon after the parties' initial exchange of proposals, filed the instant unfair labor practice charges."

Although it is true that in that case the bargaining ended through no fault of either party, and here I have found that the bargaining ended as a result of the Respondent's unlawful failure to continue to bargain with Levy present, nevertheless I cannot find, given the great movement in the Respondent's positions when bargaining finally resumed, that the Respondent's initial proposals were intended to frustrate agreement, or were evidence of bad-faith bargaining. Clearly, the Respondent did not insist on its initial, February 2 proposal, and modified its proposal in later bargaining sessions as it said it would at the February 2 session.

5. The alleged bad-faith bargaining

The complaint alleges that by its overall conduct, the Respondent engaged in bad-faith bargaining, specifically, the Respondent's (a) refusal to meet at reasonable times and for reasonable durations, (b) insisting on the removal of the union negotiator as a condition for the continuation of bargaining, (c) presenting bargaining demands designed to be rejected by the Union and to prevent the parties from reaching agreement, (d) failing and refusing to furnish the Union with requested information, and (e) engaging in a pattern of bargaining without any good-faith intention of reaching agreement with the Union.

In deciding whether an employer has engaged in surface or bad-faith bargaining, the Board examines the "totality of the employer's conduct, both at and away from the bargaining table." *Overnite Transportation Co*., 296 NLRB 669, 671 (1989). First, there is no evidence of any improper conduct engaged in by the Respondent away from the bargaining table. The General Counsel argues that the Respondent's approach to bargaining, including its line by line analysis of the Union's proposals at the first two sessions, constitutes evidence of bad-faith bargaining. I do not agree. The General Counsel's reliance on *United Technologies Corp.,* 296 NLRB 571 (1989), is misplaced. In that case, the employer consumed 12 bargaining sessions, comprising 6 months, in going through an extended discussion of the union's proposals, questioning each one in great detail, and refused to submit a counteroffer until it completed its review of the union's proposals.

The facts here are far different. The Respondent legitimately asked valid questions of the Union concerning its proposals, and raised proper issues, as set forth above, concerning the language, meaning and effect of the various clauses. Such discussion consumed only two sessions, and was vital to the Respondent's understanding of the Union's proposals. Inasmuch as the language contained in a final contract is of extreme importance and must be negotiated with precision, the Respondent's relatively brief examination of the Union's lengthy proposals during two bargaining sessions does not support a finding of overall bad-faith bargaining.

I have found, above, that the Respondent did violate the Act by (a) refusing to meet at reasonable times, and by its negotiator's failing to make himself available to bargain at more frequent times, (b) insisting on the removal of Union Counsel Levy as a condition for the continuation of bargaining, and (c) failing to furnish the Union with requested information.

I cannot find, however, that these violations are so pervasive that, even taken together, they constitute evidence of bad-faith bargaining. The Respondent did meet with the Union in four bargaining sessions over 4 months. Although its representative should have made himself more available for more frequent meetings, nevertheless the Respondent did not refuse to meet with the Union, and in fact met and bargained with it. The Respondent's refusal to bargain with the Union until Levy was replaced was occasioned by an event that certainly was not orchestrated by the Respondent. Rather, the incident was an unfortunate escalation of tempers and emotions of those present at the November 2 bargaining session. With respect to the refusal-to-furnish information, the Union was nevertheless able to prepare and present its proposals, and was informed of the high and low ranges of employee salaries, as well as the general nature of the holiday and vacation benefits.

I accordingly find that the Respondent's actions which constituted unfair labor practices did not frustrate or impede the bargaining process to an extent to warrant a finding that the Respondent did not desire to reach agreement with the Union.

In addition, these activities must be viewed in relation to the "totality" of the Respondent's conduct, and that necessarily must include subsequent events. As set forth above, numerous bargaining sessions occurred when negotiations resumed, and during those sessions, as established by the proposals offered by the Respondent, it made substantial concessions to the Union, made great movement in its proposals, and there has been no claim that it has not bargained in good faith thereafter. Thus, the Respondent "was willing to meet and confer with the Union, exchange proposals, and modify its positions in an attempt to reach agreement with the Union. *WPIX, Inc*., 293 NLRB 10 fn. 2 (1989). The Respondent's conduct "at the table seemed to indicate that the Respondent was willing to compromise with the Union in an effort to arrive at a collective-bargaining agreement. *O'Reilly Enterprises*, 314 NLRB 378 (1994).

The General Counsel argues that, even assuming that the Respondent bargained in good faith following the February 2 session, its conduct was tainted inasmuch as it was bargaining following the issuance of a complaint, and its good-faith negotiations were simply a charade to avoid a further finding of unfair labor practices. I disagree. I do not believe that the Respondent would make the concessions that it has for the 700 to 900 person unit simply in order to avoid a finding that it had not bargained in good faith. The readiness with which it has bargained, and the extent of the concessions that it has made evidence a real desire to reach agreement with the Union.

I accordingly find and conclude that the General Counsel has not established that the Respondent has engaged in surface bargaining, or that it has bargained in overall bad faith with the Union.

CONCLUSIONS OF LAW

1. The Respondent, People Care, Incorporated, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. 1199 National Health and Human Service Employees' Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in the following appropriate unit within the meaning of Section 9(a) of the Act:

> All full-time and regular part-time home health care workers employed by the Employer, including certified home health aides, personal care aides, quality compliance technicians, junior aides and housekeepers employed by the Employer out of its facility located at 500 Eighth Avenue, New York, New York, excluding all other employees, including registered nurses, licensed practical nurses, office clerical and professional employees, guards and supervisors as defined in the Act.

4. By failing and refusing and delaying in furnishing the Union with the information requested by it by its letter of February 17, 1994, except the names of clients, the Respondent violated Section 8(a)(1) and (5) of the Act.

5. By refusing to meet at reasonable times for bargaining with the Union, the Respondent violated Section 8(a)(1) and (5) of the Act.

6. By insisting on the removal of union negotiator Richard Levy as a condition for the continuation of collective bargaining, the Respondent violated Section 8(a)(1) and (5) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practice, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that the Respondent furnish the Union with all the information requested by the Union in its letter of February 17, 1994, except the names of clients, and except such information already provided to the Union through its response of June 26, 1996.

The General Counsel requested a remedy pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962). That case extended the certification year for 1 additional year because of the employer's refusal to bargain with the union. Although I have not found that the Respondent was guilty of bad-faith bargaining, nevertheless I believe that an extension of the certification year is required because of the Respondent's unlawful refusal to bargain with the Union for the 8-month period from February 2 to October 5, 1995, unless it received assurances that Levy would not be the Union's negotiator. I believe therefore that an 8 month extension of the certification year would take into account the effect of the Respondent's disruption of negotiations following the Union's certification. *Colfor, Inc*., 282 NLRB 1173, 1175 (1987); and *Caribe Staple Co.,* supra at 894.

I reject the General Counsel's request for extraordinary redress consisting of a requirement that the Respondent be ordered to (a) commence bargaining within 15 days of a Board order, (b) bargain on request for a minimum of 15 hours per week until an agreement or a lawful impasse is reached or until the parties agree to a respite in bargaining, and (c) prepare written bargaining progress reports every 15 days and submit them to the Regional Director and serve a copy of such reports on the Union and provide the Union with an opportunity to reply. Such remedies are inappropriate here. *Caribe Staple Co*., supra at 894.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended

ORDER

The Respondent, People Care, Incorporated, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing and delaying in furnishing the Union with the information requested by it by its letter of February 17, 1994, excluding the names of clients.

(b) Refusing to meet at reasonable times for bargaining with the Union.

(c) Insisting on the removal of union negotiator Richard Levy as a condition for the continuation of collective bargaining.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment, as if the initial year of certification has been extended for an additional 8 months from the commencement of bargaining and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time home health care workers employed by the Employer, including certified home health aides, personal care aides, quality compliance technicians, junior aides and housekeepers employed by the Employer out of its facility located at 500 Eighth Avenue, New York, New York, excluding all other employees, including registered nurses, licensed practical nurses, office clerical and professional employees, guards and supervisors as defined in the Act.

(b) On request, provide the Union with all the information requested by the Union in its letter of February 17, 1994, excluding the names of cleints, except such information already provided to the Union through its response of June 26, 1996.

(c) On request, provide the Union in a timely and diligent fashion with bargaining dates.

(d) On request, meet, deal with, and bargain collectively with Richard Levy and any other duly designated representative of the Union.

(e) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 22, 1994.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."